

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on June 14, 2010.

[R10-127]

PREAMBLE

1. Sections Affected

Article 4
R4-36-401
R4-36-402
R4-36-403

Rulemaking Action

New Article
New Section
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-1609(A)
Implementing statute: A.R.S. §§ 36-1601 through 36-1610

3. List of all previous notices appearing in the *Register* addressing the proposed rules:

Notice of Rulemaking Docket Opening: 16 A.A.R. 1471, August 6, 2010

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Bob Barger, State Fire Marshal
Address: Department of Fire, Building and Life Safety
1110 W. Washington St., Suite 100
Phoenix, AZ 85007-2935
Telephone: (602) 364-1081
Fax: (602) 364-1084
E-mail: Bob.barger@dfbfs.az.gov

5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

In 2010, the Arizona legislature enacted HB 2246, which changed existing law to permit the retail sale and use of permissible consumer fireworks. The legislature instructed the State Fire Marshal to make rules to carry out the new law, including incorporating by reference the National Fire Protection Association Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition. The State Fire Marshal is making the required rules.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

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Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The statutes permitting the sale and use of permissible consumer fireworks in Arizona will have significant economic impact, which it is assumed was assessed by the legislature before enacting the statutes. These rules, which simply incorporate by reference the material specified by the legislature, will have minimal economic impact.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Bob Barger, State Fire Marshal
Address: Department of Fire, Building and Life Safety
1110 W. Washington St., Suite 100
Phoenix, AZ 85007-2935
Telephone: (602) 364-1081
Fax: (602) 364-1084
E-mail: Bob.barger@dfbls.az.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

An oral proceeding regarding the proposed rules will be held as follows:

Date: Wednesday, October 13, 2010
Time: 9:00 a.m.
Location: 1110 W. Washington St., Room 145
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on Friday, October 15, 2010.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

NFPA 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471 or www.nfpa.org is incorporated at R4-36-401.

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS

Section

R4-36-401. Material Incorporated by Reference
R4-36-402. Modification of NFPA 1124
R4-36-403. Civil Penalties

ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS

R4-36-401. Material Incorporated by Reference

As required by A.R.S. § 36-1609(A), the State Fire Marshal incorporates by this reference NFPA 1124, Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition, which is published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471 and is available from NFPA and the Office of the State Fire Marshal. The incorporated material does not include a later amendment or edition but is modified as specified in R4-36-402.

R4-36-402. Modification of NFPA 1124

A. Whenever the term “Consumer fireworks” is used in NFPA 1124, substitute the term “Consumer firework” as defined at A.R.S. § 36-1601(1).

- B.** Whenever the term “Display fireworks” is used in NFPA 1124, substitute the term “Display firework” as defined at A.R.S. § 36-1601(2).
- C.** Whenever the term “Fireworks” is used in NFPA 1124, substitute the term “Fireworks” as defined at A.R.S. § 36-1601(3).

R4-36-403. Civil Penalties

- A.** Under the authority provided by A.R.S. § 36-1610, the State Fire Marshal shall impose a civil penalty of \$1,000 for each incident of prohibited use of fireworks on state land when the State Fire Marshal determines that imposing the civil penalty is in the best interest of the state.
- B.** As used in A.R.S. § 36-1610 and subsection (A), an incident of prohibited use of fireworks means the combustion, deflagration, or detonation of a single firework device.